

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JOHN C. GOODWIN III

---

Appeal No. 1997-3500  
Application No. 08/338,055

---

ON BRIEF

---

Before HAIRSTON, FLEMING, and BARRY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2 through 17.

The disclosed invention relates to a method of using price change frequency to assign electronic shelf labels to merchandise items within a price look-up table.

Claim 2 is illustrative of the claimed invention, and it reads as follows:

2. A method of assigning electronic shelf labels to merchandise items within a price look-up table comprising the steps of:

(a) determining a price change frequency for each merchandise item by a computer; and

(b) assigning the electronic shelf labels to items having a price change frequency greater than a predetermined minimum price change frequency by the computer.

The references relied on by the examiner are:

Gomersall et al. (Gomersall)	4,500,880	Feb.
19, 1985		
Hunt	5,111,196	May
5, 1992		
Poland et al. (Poland)	5,172,314	Dec. 15,
1992		
Spiegelhoff et al. (Spiegelhoff)	5,402,336	Mar. 28,
1995		
		(filed Jan. 15,
1993)		

Claims 2 through 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Poland in view of Gomersall, Hunt, Spiegelhoff and common knowledge.

Reference is made to the briefs and the answers for the respective positions of the appellant and the examiner.

OPINION

The obviousness rejection of claims 2 through 17 is reversed.

Poland discloses an apparatus for communicating price changes to electronic price display devices 24 via a serial data link 21 and serial bus 23 (Figure 1).

In Gomersall, the Universal Product Code (UPC) is used as the address code for an electronic display device which may be mounted on a shelf. Each electronic display device is connected to a store computer, and a prestored address code in the electronic display device is compared with an address code sent by the computer (column 2, lines 46 through 52).

Hunt discloses a battery-powered, stand-alone, shelf-mounted module that displays information on a liquid crystal display (Figure 1). Data in the module are updated by a portable data terminal that attaches to the module. Two-way data transfer occurs between the module and the portable data terminal.

Spiegelhoff discloses a system and method for allocating monetary resources among a plurality of wholesalers to obtain the best unit price (Abstract).

The examiner concludes (Answer, page 5) that "[t]hus, it would have been obvious to the skilled artisan that items with frequent price changes are the most labor intensive, and therefore costly." According to the examiner, "[t]hese items would then be the most logical choice for using electronic labels" (Answer, page 5).

In rebuttal to the rejection (Reply Brief, page 5):

Applicant submits that the Examiner has failed to establish a prima facie case of obviousness, since none of the references teach[es] the assignment of electronic price labels to merchandise items based upon price change frequency, when the number of electronic price labels in the store is less than the number of merchandise items. None of the references teach[es] the desirability of purchasing fewer electronic price labels by a store and assigning those electronic price labels only to those items whose price change frequencies exceed a predetermined threshold.

We agree with appellant's argument that the examiner has not come to grips with the method step of assigning electronic shelf labels based on price change frequency for each item of merchandise, and that the examiner has not, therefore, established a prima facie case of obviousness.

In summary, the obviousness rejection of claims 2 through 17 is reversed.

DECISION

The decision of the examiner rejecting claims 2 through 17  
under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
LANCE LEONARD BARRY	)	
Administrative Patent Judge	)	

Appeal No. 1997-3500  
Application No. 08/338,055

Page 7

PAUL W. MARTIN  
INTELLECTUAL PROPERTY SECTION LAW DEPT.  
AT&T GLOBAL INFORMATION SOLUTIONS CO.  
101 W. SCHANTZ AVENUE, ECD-2  
DAYTON, OH 45479-0001

KWH/jlb